



GOVERNOR GREG ABBOTT

July 24, 2019

Justin Gordon
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Letter Ruling Request
OOG ID#: 279-19

Dear Mr. Gordon:

On July 10, 2019, the Office of the Governor (the "OOG") received a request under the Public Information Act (the "PIA") from Mr. Daniel Kaufman. A copy of the request is attached as Exhibit A. Pursuant to section 552.301(a), the OOG requests a decision from your office on whether certain responsive information is excepted from disclosure under the PIA. Our office submits this brief in accordance with sections 552.301(b) and 552.301(e).

The OOG will release some responsive information to the requestor. The OOG asserts portions of the remaining responsive information are excepted from required public disclosure under section 552.101 of the PIA. The responsive information at issue is attached as Exhibit B. The OOG has copied the requestor as a recipient of this brief pursuant to sections 552.301(d) and 552.301(e-1).

I. Information Excepted From Required Public Disclosure Under Section 552.101 in Conjunction with Common-law Privacy: Medical and Financial Information

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Your office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Your office has further found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit

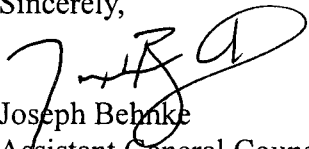
authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

The OOG asserts the information marked within Exhibit B reveals information that is subject to common-law privacy. Thus, the OOG asserts the marked information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

II. Conclusion

On behalf of the OOG and pursuant to section 552.301 of the Government Code, I respectfully request an open records letter ruling as to the applicability of the above raised exception. If you have any questions or need additional information, please contact me at (512) 463-1750.

Sincerely,



Joseph Behnke
Assistant General Counsel
Office of Governor Greg Abbott

cc: Daniel Kaufman
MuckRock News
DEPT MR 76965
411A Highland Ave.
Somerville, Massachusetts 02144-2516
VIA EMAIL ONLY

EXHIBIT A

From: 76965-85249919@requests.muckrock.com
Sent: Wednesday, July 10, 2019 12:07 PM
To: Public Records
Subject: 279-19 Kaufman - Request

[EXTERNAL SENDER] - Do not click on links or open attachments in unexpected messages.

Office of the Governor
Texas Public Information Act Office
P.O. Box 12428
Austin, TX 78711

July 10, 2019

To Whom It May Concern:

Pursuant to the Texas Public Information Act, I hereby request the following records:

Copies of any email communications with any Office of the Governor employee mentioning or regarding SCI, Service Corporation International, or Robert Waltrip between the dates of January 1, 2013 and July 1, 2019. As a member of the news media and a writer at The American Prospect I ask that any associated fees for this request be waved.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Daniel Kaufman

Filed via MuckRock.com

E-mail (Preferred): 76965-85249919@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Foffice-governor-3877%252Fsci-and-the-governors-office-76965%252F%253Femail%253Dpublicrecords%252540governor.state.tx.us&url_auth_token=AAAdNLipx8af029Zxg4amuIxO6g%3A1hlG3A%3AwvhpJarILcM53XIWes-AIOM-Rdc

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 76965
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.